

**New Center Hospital and Local 79, Service Employees International Union, AFL-CIO. Case 7-CA-31485(1)**

June 26, 1992

**DECISION AND ORDER**

BY CHAIRMAN STEPHENS AND MEMBERS  
DEVANEY AND OVIATT

Upon a charge filed by the Union on February 4, 1991, the General Counsel of the National Labor Relations Board issued a complaint on March 7, 1991, against New Center Hospital, the Respondent, alleging that it has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) and Section 8(d) of the National Labor Relations Act. The Respondent filed an answer to the complaint on April 24, 1991, after which the parties entered into a settlement agreement, approved by the General Counsel, resolving the unfair labor practices alleged in the complaint.<sup>1</sup> However, on April 27, 1992, the General Counsel issued an "Order Setting Aside Settlement Agreement and Reissuing Complaint and Notice of Hearing" because of the Respondent's alleged failure and refusal to comply with the terms of the settlement agreement. Although properly served with copies of the charge and the April 27, 1992 Order setting aside the settlement agreement and reissuing the March 7, 1991 complaint, the Respondent has failed to file an answer.

On May 26, 1992, the General Counsel filed a Motion for Summary Judgment. On May 29, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment dis-

close that, by letter dated May 13, 1992, the Acting Regional Director for Region 7 notified the Respondent that unless an answer was received by May 20, 1992, a Motion for Default Judgment would be filed.<sup>2</sup> To date, no answer has been filed by the Respondent.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent, a Michigan corporation with its principal office and place of business located at 801 Virginia Park, Detroit, Michigan, is engaged in the operation of a hospital and the provision of health care services. During the 12 months preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, had gross revenues in excess of \$250,000, and purchased goods and materials valued in excess of \$10,000 which were transported and delivered to its Detroit, Michigan facility directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all relevant times, the Union, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the Respondent's employees in separate appropriate bargaining units (Unit A and Unit B), and has been recognized as such by the Respondent, such recognition having been embodied in successive collective-bargaining agreements, the most recent of which are effective by their terms for the period May 1, 1990, to April 30, 1993. The appropriate bargaining units are:

**Unit A**

All full-time and regular part-time ward clerks/nurses aides, orderlies, dietary and kitchen employees, building and grounds main-

<sup>1</sup> The settlement agreement provided for the withdrawal of "any Complaint(s) and Notice of Hearing heretofore issued in this case, as well as any answer(s) filed in response."

<sup>2</sup> The letter also states that the Respondent's administrator, Alfred Moore, was informed by counsel for the General Counsel during the phone conversation on May 13, 1992, of the requirement to file an answer, that Moore indicated the Respondent did not intend to file an answer, and that counsel for General Counsel advised Moore that a Motion for Default Judgment would be filed if an answer was not filed.

tenance employees, housekeeping employees, porters, janitors and janitresses employed by Respondent at its facility located at 801 Virginia Park, Detroit, Michigan 48202, but excluding department heads.

#### Unit B

All technical employees, all non-technical employees; all licensed practical nurses; all clerical employees; and all physical therapy aides employed by Respondent at its facility located at 801 Virginia Park, Detroit, Michigan 48202, but excluding confidential, managerial, executive and part-time (16 hours or less per week) employees and supervisors, as defined in the Act.

Article II, section 2 of the parties' current collective-bargaining agreement covering employees in Unit A requires that all union dues and fees properly deducted from the pay of unit employees be remitted to the Union by the end of the month in which the deductions are made. Similarly, article III, section 4 of the agreement covering employees in Unit B requires monthly remission to the Union of all union dues and fees properly deducted from the pay of employees in Unit B for the preceding month.

Since in or about September 1990, and continuing to date, the Respondent had failed and refused to remit to the Union the dues and fees properly deducted from the pay of unit employees as required by the above contracts. By engaging in such conduct, we find that the Respondent has unilaterally modified the terms of its collective-bargaining agreements, and has refused and is refusing to bargain with the Union, in violation of Section 8(a)(1) and (5) and Section 8(d) of the Act, as alleged.

#### CONCLUSION OF LAW

By failing and refusing to remit to the Union dues and fees properly deducted from the pay of unit employees, as required by the terms of its collective-bargaining agreements with the Union, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5), and Section 8(d), and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to remit to the Union all union dues and fees that were properly

deducted from the pay of unit employees but that have not been remitted to the Union since in or about September 1990, with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

#### ORDER

The National Labor Relations Board orders that the Respondent, New Center Hospital, Detroit, Michigan, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with Local 79, Service Employees International Union, AFL-CIO, as the exclusive collective-bargaining representative of the Respondent's employees in the appropriate bargaining units described below as "Unit A" and "Unit B" and from unilaterally modifying its collective-bargaining agreements with the Union by failing and refusing to comply with provisions contained therein requiring that it make monthly remission to the Union of all union dues and fees that were properly deducted from the pay of unit employees. The appropriate bargaining units are:

#### Unit A

All full-time and regular part-time ward clerks/nurses aides, orderlies, dietary and kitchen employees, building and grounds maintenance employees, housekeeping employees, porters, janitors and janitresses employed by Respondent at its facility located at 801 Virginia Park, Detroit, Michigan 48202, but excluding department heads.

#### Unit B

All technical employees, all non-technical employees; all licensed practical nurses; all clerical employees; and all physical therapy aides employed by Respondent at its facility located at 801 Virginia Park, Detroit, Michigan 48202, but excluding confidential, managerial, executive and part-time (16 hours or less per week) employees and supervisors, as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union all union dues and fees that have been properly deducted from the pay of unit employees but that have not been forwarded to the Union since on or about September 1990,

with interest as described in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amounts due under the terms of this Order.

(c) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 79, Service Employees International Union, AFL-

CIO, which is the exclusive collective-bargaining representative of our employees in the bargaining units described below as "Unit A" and "Unit B," and will not unilaterally modify our collective-bargaining agreements with the Union by refusing to make monthly remissions to the Union of union dues and fees we have properly deducted from the pay of unit employees, as required by the contracts. The appropriate bargaining units are:

#### Unit A

All full-time and regular part-time ward clerks/nurses aides, orderlies, dietary and kitchen employees, building and grounds maintenance employees, housekeeping employees, porters, janitors and janitresses employed by Respondent at its facility located at 801 Virginia Park, Detroit, Michigan 48202, but excluding department heads.

#### Unit B

All technical employees, all non-technical employees; all licensed practical nurses; all clerical employees; and all physical therapy aides employed by Respondent at its facility located at 801 Virginia Park, Detroit, Michigan 48202, but excluding confidential, managerial, executive and part-time (16 hours or less per week) employees and supervisors, as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union all union dues and fees that were properly deducted from the pay of unit employees but which have not been forwarded to the Union since in or about September 1990, with interest.

NEW CENTER HOSPITAL